



## **Battle Creek Zoning Board of Appeals**

### **Staff Report**

Meeting: April 13, 2010

**To:** Zoning Board of Appeals  
**From:** Glenn Perian, Senior Planner  
**Subject:** Petition for a sign variance (Z-06-10) to permit the installation of a 120 square foot free standing sign with off premises advertising as part of the new Family Fare project on property commonly known as 35 E. Columbia Avenue.

#### **Summary**

This report addresses a petition from Anchor Lakeview, LLC seeking approval of a Sign Variance (Z-06-10), to install one 120 square foot free standing sign with 20 square feet of that sign dedicated to off premises advertising on the future site of Family Fare located at the intersection of Capital Avenue and Columbia Avenue.

#### **Background/Project Information**

The subject site is located at the general intersection of Capital Avenue SW and Columbia Avenue. The commercial property is somewhat irregularly shaped with road frontage on three sides and located within the C-2 (General Business) District. Permitted signs in the C-2 district are governed by Chapter 1296.37 SIGNS IN THE C-2, C-3, C-5, and C-6 DISTRICTS. Free standing signs are permitted on each street frontage, with a maximum area of one-hundred square feet and a height of 25 feet. Building center signs must identify at least 6 or more contiguous stores located on a single site. Off premises signs are capped at a maximum of 75 billboard faces allowed in the City at any time. Currently, there are approximately 83 billboard/off premises signs in the City. The petitioner would like to eliminate one of the allowable free standing signs available to them (on Grand Blvd.) and be allowed to advertise for the Long John Silvers restaurant that will occupy frontage on Capital Ave. SW once the project is completed.

#### **Public Hearing and Notice Requirements**

An advertisement of this public hearing was published in the Battle Creek SHOPPER NEWS on Thursday, March 18, 2010 – not less than the 15 days before the hearing as required by State Law and ordinance.

Notices of the public hearing were also sent by regular mail on March 16, 2010 to 60 properties located within 300 feet of the subject parcel.





Aerial Photograph of the Subject Site

### **Surrounding Land Uses**

The subject property is located in the general vicinity of Capital Ave. SW/E. Columbia Ave./ and Grand Boulevard. There are commercial uses to the south and west and residential uses to the north and east.

### **Applicable Zoning Ordinance Provisions**

Chapter 1296.30 states; The concurring vote of four members of the Zoning Board of Appeals shall be necessary to reverse, wholly or partly, or modify, any order, requirement, decision or determination of the Administrator, to decide in favor of the applicant upon a matter on which it is required to pass or effect any variance.

### **Analysis**

The Appellant is requesting a sign variance that would authorize the installation of a 120 square foot free standing sign, contrary to limitations outlined in chapter 1296 of the Planning and Zoning Code. The Appellant has stated in the supporting material that they are proposing to build one sign of 125 square feet instead of two signs of 100 square feet each. The proposed off premises sign for Long John Silvers is not permitted since the development does not qualify as a shopping center. The purpose of the long John Silvers advertising is to encourage cross access between properties, eliminating street congestion at the intersection of Capital Ave. SW and E Columbia Avenue. Furthermore, the petitioner has agreed to eliminate any proposed free standing signage on the Grand Blvd. street frontage.



The Appellant has supplied reasons supporting the request for appeal and they are included with the application and part of this report. They have also provided a photo simulation of what the proposed signage will look like. We would like to clarify that what is being proposed is an additional 20 sq ft of signage dedicated to Long John Silvers advertisement, not the 25 sq ft that is referenced in the application.

Is there something unique about this lot or property that makes relief necessary? Staff thinks that the 3 street frontages and three free standing signs permitted under ordinance standards qualify as a unique situation in this case, especially in light of the fact that the Grand Boulevard frontage has a number of residential properties located on the east side of the street.

### **FINDINGS**

In consideration of all variations from the Zoning Code, the Board shall, before making any such exceptions or variations, in a specific case, first determine that all the conditions listed below are satisfied. Planning staff has reviewed these conditions and believe that each condition can be justified in an affirmative manner. We have provided a rationale for each condition set forth below for Sign Variances in accordance with Section 1296.31 of the Planning and Zoning code:

- a) Staff believes the Appellant has clearly demonstrated that hardship or practical difficulty will in fact exist if the variance is not granted in that the Appellant has agreed to eliminate one free standing sign permitted by code along the Grand Blvd. frontage. In doing so, the Appellant will be reducing the impact of the commercial use to those residences located on the east side of Grand Blvd. Furthermore, by allowing the Long John Silvers advertisement on the proposed E. Columbia free standing sign, travelers along E. Columbia will be encourage to access the restaurant through the Family Fare access points, reducing congestion at the intersection.
- b) The mere fact that other, larger signs constructed under prior sign ordinances do exist in the area shall not be reason to declare hardship or practical difficulty and is not being claimed by the Appellant in this case.
- c) In no case shall a variance be granted if it is determined by the Zoning Board of Appeals that the applicant has created the hardship or practical difficulty. Staff does not believe this situation is self created. Furthermore, the proposal is intended to protect the residents living on Grand Blvd. from further commercial encroachment.
- d) Before a variance is granted, it must be shown that the alleged hardship or practical difficulty, or both, is exceptional and peculiar to the property of the person requesting the variance, and that it results from conditions that do not exist generally throughout the City. Staff believes the Appellant has met this test as explained in letter "a" above.
- e) The applicant has furnished a site drawing, photographs and or any other means of proof to the Board so as to indicate that hardship or practical difficulty does, in fact, exist. A site drawing and concept of the sign proposal is included in your packet.

- f) Staff does not believe the applicant is relying on the fact that the sign has already been purchased to justify the granting of this variance request. However, the term hardship shall not be deemed financial hardship relating to the cost of the sign, to the fact that the sign has already been constructed or to the fact that the sign is only available in standard sizes and/or materials. The Appellant is not making this claim in this particular case.
- g) Staff believes the alleged hardship or practical difficulty which will result in a failure to grant the variance is substantially more than a mere inconvenience in this case. Furthermore, we think the developer is going above being a “good neighbor” and is trying to better the City of Battle Creek as a whole (see letter “a” above).
- h) Staff believes the alleged hardship and practical difficulty, which will result from a failure to grant the variance, includes substantially more than a mere inconvenience or inability to attain higher financial return in this case.
- i) Staff believes that allowing the variance will result in substantial justice being done, considering the public benefits intended to be secured by the Zoning Code, the individual hardships that will be suffered by a failure of the Board to grant a variance and especially the rights of others whose property would be affected by the allowance of the variance.

### **Recommendation**

The Zoning Board of Appeals can approve, approve with conditions, or deny this request. The Zoning Board of Appeals can also table or postpone the request pending additional information. Planning staff recommends that the Zoning Board of Appeals approve the Sign Variance (Z-06-10) based on the above listed findings contained in this staff report with the condition that no free standing signage will be allowed on the Grand Boulevard street frontage.

### **Attachments**

The following information is attached and made part of this Staff Report.

1. ZBA Petition Form (Petition #Z-06-10),
2. Site plan showing proposed sign locations
3. Proposed signage for Capital Ave SW and E. Columbia frontages